

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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SEP 29 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of the Subscriber Carrier)
Selection Changes Provisions of the)
Telecommunications Act of 1996) CC Docket No. 94-129
)
Policies and Rules Concerning)
Unauthorized Changes of Consumers')
Long Distance Carriers)

REPLY COMMENTS

BellSouth Corporation for itself and its affiliates ("BellSouth"), including BellSouth Telecommunications, Inc. ("BST"), hereby submits its comments in the above-captioned rulemaking proceeding.¹

In this proceeding, the Commission is examining what changes should be made to its existing rules which govern the selection and change of a customer's designated primary interexchange carrier² in light of Section 258 of the Telecommunications Act of 1996.³ Approximately fifty parties have filed comments in this proceeding, addressing a wide variety of issues. BellSouth's Reply Comments will necessarily be focused upon several major issues only.

¹ Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129, Further Notice of Proposed Rulemaking (released July 15, 1997) ("Notice").

² 47 C.F.R. Sections 64.1100 and 64.1150.

³ 47 U.S.C. Section 258. Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("1996 Act").

I. THE COMMISSION SHOULD NOT IMPOSE MORE STRINGENT REQUIREMENTS ON ILECS THAN ON OTHER CARRIERS

Several parties advocate that there should be different, or additional, requirements placed upon incumbent local exchange carriers (“ILECs”) as compared to other carriers. These parties have failed to provide an adequate basis for such a differentiation. Indeed, as BellSouth explained in its own Comments, an ILEC stands on equal footing with a facilities-based competitive local exchange carrier (“facilities-based CLEC”), insofar as slamming issues are concerned. Both would have the obligation to execute changes in preferred carriers (“PCs”) for its service subscribers in accordance with the subscriber’s request and consistent with the Commission’s verification requirements. Where a competitive local exchange carrier is reselling the ILEC’s local exchange service (i.e., it is a “reseller CLEC”), the reseller CLEC can enter the ILEC’s Operations Support Systems (“OSS”) to make PC changes just as readily as can the ILEC, and there is no need for a distinction in how the Commission’s slamming rules apply as between these two types of carriers.

Moreover, ILECs are not uniquely situated to join with an affiliated interexchange carrier to provide a packaged service arrangement for subscribers desirous of it. Indeed, it is other carriers who at the present time are in a position to prefer their own affiliated operations in transactions with subscribers, a CLEC as to its affiliated interexchange company and an interexchange company as to its affiliated CLEC. ILECs do not yet have the ability to provide interexchange service in their own local exchange service operating territory.⁴

⁴ Moreover, a Bell operating company ILEC may not discriminate between its long distance affiliate and any other entity in the provision of services. 47 U.S.C. § 272(c).

Some parties suggest that ILECs should be limited to the use of independent third-party verification of all subscriber PC choices. The Commission should not adopt any such notion. As discussed above, there is no reason to single out ILECs and impose more restrictive conditions on them. Other verification options presently in the Commission's rules are equally as capable of assuring that the ILEC has obtained its subscribers' authorization. As such, any benefits of such a requirement simply pale when weighed against the extraordinary cost, to ILECs and their customers, of a mandatory requirement for independent third party verification.

Indeed, the Commission in this proceeding is delineating the specific nature of the applicable penalties for violations of its rules. If these proposals are adopted, there should be substantial incentive for all carriers, including ILECs, to conduct their activities in a careful and fair manner. The Commission has proposed a liability standard which is, in essence, a strict liability standard under which a carrier submitting a PC change which had not been verified in accordance with one of the choices established under the Commission's rules would be strictly liable regardless of whether negligence or willful conduct was involved.⁵ Thus, a carrier who makes a mistake will not ultimately be compensated for the service provided as a result of such mistake. This should be sufficient incentive for all carriers, including ILECs, to give rigorous attention to obtaining proper verification, no matter which verification option is utilized, as well as

⁵ Some parties suggest that no liability should attach unless willful conduct is involved. BellSouth disagrees. A subscriber should be made whole regardless of the nature of the act which resulted in the unauthorized PC change, and should only have to pay to the authorized carrier the amount which would have been due to that carrier. The Commission could, of course, impose additional penalties for egregious acts, such as those involving willful or fraudulent conduct or a continuing pattern of negligence.

to assuring proper implementation of the authorized choice.⁶ Under these circumstances, no additional requirements need be placed on ILECs.

Nor should the Commission require ILECs to issue reports regarding the handling of PC change requests, comparing the time within which such changes are processed for each ILEC's own services as compared to other carriers' services. There is no need for such reports, given that OSS access is available and that orders entered through the OSS will be accomplished immediately. Moreover, even where a PC change comes to the ILEC from an end user who requests an intraLATA toll provider other than the ILEC, the ILEC will have the incentive to implement this change quickly in order to demonstrate efficient customer service and to gain and maintain high customer satisfaction. The same would be true where the ILEC executes interLATA toll PC requests, even once the ILEC has an affiliate which provides interLATA toll service in the same region.⁷

II. THE WELCOME PACKAGE VERIFICATION OPTION SHOULD BE RETAINED

Several parties urge the Commission to eliminate the "welcome package" from the list of ways in which a subscriber's PC choice can be verified, citing a "negative option" aspect of such

⁶ As BellSouth indicated in its Comments, subscribers who have been slammed should be required to pay the authorized carriers' charges which would have otherwise been due. BellSouth opposes the suggestions of other parties that subscribers should be permitted free service, given the encouragement this could provide some subscribers to fabricate slamming incidents in order to avoid the obligation to pay for service rendered.

⁷ In any event, any reporting requirements should be determined in the Commission's Non-Accounting Safeguards proceeding. See Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, FCC 96-489 (released December 24, 1996).

an approach.⁸ BellSouth, however, agrees with others that a “welcome package” is not like a negative option program. This is because a “welcome package” is utilized only after a subscriber has made a choice in the first instance. The subscriber has already taken an affirmative step to choose its PC. Thus, the “welcome package” merely provides the customer who has already chosen a carrier the ability to rescind that choice.⁹

III. IN-BOUND VERIFICATION SHOULD NOT BE REQUIRED

Several parties suggest that PC choices resulting from in-bound calls should be required to be verified.¹⁰ BellSouth opposed this in its Comments and here reiterates that position. When a subscriber has made an in-bound call, it is taking its own affirmative steps to contact the carrier. This is in stark contrast to marketing calls made to the subscriber for the distinct purpose of gaining a new customer. As one commenter states, there simply is no evidence that slamming as a result of in-bound calls is a serious problem or that the imposition of verification for in-bound calls will reduce the occurrence of slamming.¹¹ Indeed, less than one percent of slamming complaints received by BellSouth result from in-bound calls.¹² Given this low incidence of in-bound problems, the expense of requiring in-bound verification would simply not be justified in light of the minimal benefit obtained. As BellSouth stated in its Comments, however, should the

⁸ See, e.g., SBC at 7-8, Frontier at 14-16, Attorneys General at 4-5, NYDPS at 6, PUCT at 4-5.

⁹ See, e.g., US West at 30, DMA at 6.

¹⁰ See, e.g., MCI at 10, NYDPS at 8, TW Comm at 6-7, CompTel (ILEC only) at 10.

¹¹ AT&T at 26-27.

¹² This 1% was determined by a review of a representative sampling of slamming complaints received by BellSouth since October, 1996.

Commission nevertheless deem it necessary to require verification for in-bound calls, it should permit carriers to utilize verification by audio recording equipment.

IV. PC FREEZE ISSUES

Several parties suggest that the Commission should require verification of PC freezes. The Commission should refrain from such a requirement at this time. BellSouth does not believe that lack of verification has presented any problem. Indeed, BellSouth does not market the availability of the PC freeze, but rather offers it only to those customers which have been slammed or the those who affirmatively request a PC freeze in the first instance. BellSouth in each instance only implements the freeze as a result of a conversation with the subscriber him- or herself. To require additional verification could be confusing and frustrating to subscribers. Most requesting a freeze want it immediately and would not tolerate the implementation delay associated with many of the verification options.

Some commenters urge the Commission to ban PC freezes entirely, arguing that a PC freeze limits a subscriber's choice of carriers, or that a moratorium be placed on ILECs' offerings of PC freeze for a period of time. The Commission should not implement either of these suggestions. A PC freeze is the only protection mechanism a subscriber has today against slamming of its local toll or interLATA carrier. It is important that this vehicle be maintained as an option to all subscribers.

BellSouth, however, does support the suggestion that PC freezes be administered in a competitively neutral manner. Information should be provided to the subscriber as to the effects of a PC freeze and the steps involved in removing it. Moreover, a PC freeze should be available independently for local toll and interexchange provider choices, such that a customer could freeze

one or the other or both, as some commenters suggest.¹³ This is a flexible, consumer-friendly arrangement which is consistent with the fact that different PC choices can be made for these two markets. However, the Commission should not adopt the suggestion of some parties that a PC freeze of interexchange or local toll carrier should be required to be maintained even when a subscriber changes from one LEC to another. When a subscriber moves from one LEC to another, the subscriber has the opportunity to set up its entire service arrangement in a different manner.

Some parties advocate a requirement that ILECs provide information regarding other carriers showing which subscribers have a freeze as to what services.¹⁴ BellSouth understands the need for such information. Indeed, BellSouth already offers to carriers certain list services which would provide such information in diskette or tape format for a charge, and is willing to continue this service. However, BellSouth opposes any requirement that an entire database be created with such information for access by all carriers, given the expense which would be entailed in doing so.

V. THE COMMISSION'S VERIFICATION REQUIREMENTS SHOULD NOT APPLY TO PROVIDERS OF COMMERCIAL MOBILE RADIO SERVICES

BellSouth supports Bell Atlantic Mobile (BAM) in its request that the Commission declare that Section 258, and the rules being adopted to implement that provision, will not be applied to CMRS. As BAM explains in its comments, unlike the traditional wireline services, the provision of CMRS is not subject to equal access requirements. Since the imposition of the wireline equal access regime was the predicate for the Commission's initial anti-slamming rules,

¹³ See, e.g., CBT and USTA at 7.

¹⁴ See, e.g., CompTel at 9.

slamming regulations are simply unnecessary for CMRS. In addition, and more importantly, there is no history of, nor is there any evidence of slamming by CMRS carriers. There is simply no reason to impose rules upon an industry where the notion of slamming does not even exist.¹⁵ Interestingly, although the concept of applying slamming rules to “all telecommunications carriers” is supported generally, the commenters in fact support applying the rules to interexchange carriers, intraLATA toll service providers, ILECs and CLECs, but are, by and large, silent as to CMRS.¹⁶ Applicability of the rules to CMRS is typically not even mentioned in the comments for the very good reason that slamming has not existed in the CMRS industry and no reason exists to extend slamming rules to CMRS.

VI. CONCLUSION

BellSouth reiterates the need for the Commission to be visionary in its approach to establishing slamming regulations for all carriers, and, to refrain from adopting rules which place more stringent requirements upon an ILECs than upon other carriers. The Commission should retain the “welcome package” verification option and should limit the application of its verification rules to out-bound marketing calls. The Commission should permit PC freeze

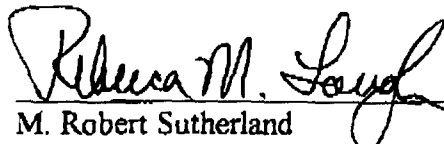
¹⁵ See, SBC at 5.

¹⁶ See, e.g., AT&T Corp. at 1-2; Ameritech at 10; New York State Consumer Protection Board at 19-20; Florida PSC at 2.

programs to continue but should not subject these to its verification rules. Finally, the Commission should refrain from applying its verification rules to CMRS carriers.

Respectfully submitted,

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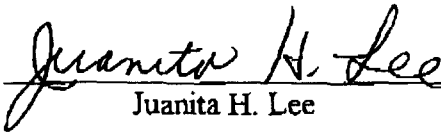
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CERTIFICATE OF SERVICE

I hereby certify that I have this 29th day of September, 1997 served all parties to this action with a copy the foregoing **REPLY COMMENTS** by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties listed on the attached service list.



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